

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee. Authorization for this examiner's amendment was given in a telephone interview with James Voeller on 1/28/10.

The application has been amended as follows:

44. (currently amended) ~~Mutated~~ A mutated ~~V1/AR1/AV1 or C1/AL1/AC1~~ gene polynucleotide sequence of a tomato infecting geminivirus, wherein the mutations consist of silent point mutations distributed along the C1/AL1/AC1 polynucleotide sequence in such a way that ~~the~~ continuous homology between the mutated C1/AL1/AC1 polynucleotide sequence and ~~the corresponding viral gene~~ the wild-type C1/AL1/AC1 polynucleotide sequence is ~~below~~ less than or equal to 8 nucleotides, preferably ~~below or equal to 5 nucleotides~~, said mutated C1/AL1/AC1 polynucleotide sequence encoding ~~for a capsid protein or for a truncated~~ Rep protein, respectively.

45-46. (canceled)

47. (currently amended) ~~Mutated~~ The mutated C1/AL1/AC1 gene polynucleotide sequence according to claim ~~[[46]]~~ 44, wherein the encoding truncated

Rep proteins ~~consist~~ consisting of 130 amino acids (Rep-130) to 210 amino acids (Rep-210), said truncation occurring at the 3' terminal.

48. (currently amended) ~~Mutated~~ The mutated C1/AL1/AC1 gene polynucleotide sequence according to claim [[46]] 47, having the sequence of SEQ ID NO: 4, said polynucleotide sequence encoding for Rep-210 protein having the amino acid sequence of SEQ ID No 3 or SEQ ID No 5 NO: 5.

49. (cancelled)

50. (currently amended) ~~Mutated~~ The mutated gene C1/AL1/AC1 polynucleotide sequence according to claim 44 wherein the tomato infecting geminivirus is TYLCSV Tomato yellow leaf curl Sardinia virus (TYLCSV).

51. (currently amended) Synthetic A construct comprising an heterologous polynucleotide sequence containing in the 5'-3' direction:

a) a polynucleotide sequence acting as promoter in said plant, or plant tissue or transformed plant cells;

b) a non-translated polynucleotide sequence positioned 5' of the encoding region of the mutated geminivirus C1/AL1/AC1 polynucleotide sequence;

c) a mutated gene C1/AL1/AC1 polynucleotide sequence as defined according to claim 44; and

d) a polynucleotide sequence acting as transcription terminator, positioned 3' with respect to the mutated ~~gene~~ C1/AL1/AC1 polynucleotide sequence.

52. (currently amended) ~~Expression~~ An expression vector comprising the construct as defined according to claim 51.

53. (currently amended) ~~Transgenic~~ A transgenic plant, or plant tissue or plant cells thereof, comprising ~~in their genome~~ a mutated ~~gene~~ C1/AL1/AC1 polynucleotide sequence as defined according to claim 44.

54. (currently amended) ~~Seed~~ A seed comprising ~~in its genome~~ a mutated ~~gene~~ C1/AL1/AC1 polynucleotide sequence as defined according to claim 44.

70. (New) The mutated C1/AL1/AC1 polynucleotide sequence according to claim 44, wherein the continuous homology between the mutated C1/AL1/AC1 polynucleotide sequence and the wild-type C1/AL1/AC1 polynucleotide sequence is less than or equal to 5 nucleotides.

Status of Rejections

All the rejections are withdrawn in light of the claims amendments and this amendment.

Allowable Subject Matter

Claims 44, 47-48, 50-55, 58-59, 63-65 and 68-70 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Zheng whose telephone number is 571-272-8031. The examiner can normally be reached on Monday through Friday 9:00 AM - 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anne R Kubelik/
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